

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1200 of 1991
WITH
 SPECIAL CIVIL APPLICATION No.11992 of 2002
WITH
 SPECIAL CIVIL APPLICATION No.7859 of 1995
WITH
 SPECIAL CIVIL APPLICATION No.352 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

GUJARAT STATE SECONDARY AND HIGHER SECONDARY
 MANAGEMENT & 4 - Petitioner(s)
 Versus
 STATE OF GUJARAT & 1 - Respondent(s)

Appearance :

MR DD VYAS for Petitioner(s) : 1 - 2.UNSERVED-WANT OF
 TIM for Petitioner(s) : 3, 5,NOTICE SERVED for
 Petitioner(s) : 4,
 NOTICE SERVED for Respondent(s) : 1 - 2.

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 22/01/2007

COMMON ORAL JUDGMENT

(1) These four petitions are heard and disposed of
 together as the principal controversy between the

parties relates to validity or otherwise of Government Resolution No.BAMASH-1187-2879-51-G dated 17.07.1990.

ORDER IN SPECIAL CIVIL APPLICATION NO.1200 OF 1991

- (2) In Special Civil Application No.1200 of 1991 GRs dated 14.08.1987, 29.03.1986 and 09.05.1980 have also been challenged. The only bone of controversy is whether the respondent-State can frame a policy whereunder it can reduce/restrict the amount of grant that is payable to an educational institution in relation to the other expenses and expenditure for rent of premises, while incidental challenge is as to whether such restriction/reduction in grant should be retrospective or prospective in operation.
- (3) It is an admitted fact that each of the petitioner institutions was receiving grant @ 20% of the salary bill towards other educational expenses and rent paid for hiring premises to run a school. By virtue of the impugned resolution dated 17.07.1990 the said amount has been reduced from 20% to 10% and has

been made effective from 1987-1988. In other words, what amount was paid under Resolution dated 14.08.1987 and 24.10.1989 for the aforesaid purposes is sought to be recovered by way of adjustment from the grant payable to the educational institution after 17.07.1990.

- (4) The basic grievance made on behalf of the petitioners is that the petitioner-Institution having incurred the expenses on the basis of the policy which was in force cannot be now called upon, to either reduce such expenditure for which the institution has taken some steps and committed itself, by virtue of a fiat in the form of impugned resolution. That there is no rational or basis for effecting such reduction in the grant payable. That once a policy was put in place fixing a certain percentage of the salary bill for the purposes of grant under the specified heads, it was not open to the State to restrict/reduce the same. That the action is in violation of principle of natural justice.

- (5) Alternatively, it was contended that the amount having already been paid to the petitioner-Institution the respondent-State must not be permitted to effect recovery of the said amount by retrospective operation of the impugned resolution as that would result in financial instability in so far as the petitioner-Institution is concerned. That at least in so far as the challenge as to retrospective operation of the resolution is concerned, it was apparent that an amount which was already expended for the purposes for which the grant was given cannot be recovered by the institution and thus the institution itself will be put to loss if such an action on behalf of the respondent-State is permitted. In other words, the grant payable for the period after the date of resolution would stand reduced proportionately leaving the institution with reduced amount without being put to notice on this count.
- (6) On behalf of the respondent-State the learned Additional Government Pleader has submitted that

the resolution and its validity cannot be adjudicated this Court as the same was a policy decision and the government was entitled to frame a policy taking into consideration the administrative and financial exigencies in light of the larger public interest. That there was no vested right in the petitioners to claim the grant at a particular figure and it was always open to the State to re-frame the policy in tune with the requirement of the times.

- (7) It is apparent that the challenge made by the petitioners to the impugned resolution as well as the earlier resolutions per se cannot be upheld. In so far as the earlier resolutions of 1987, 1989 and 1980 are concerned, it is apparent that the challenge is a belated one and on this limited count, it is not necessary to entertain the same.
- (8) In so far as the impugned resolution dated 17.07.1990 is concerned, in preamble the said resolution specifically records that in June 1987 by virtue of the award of 4th Pay Commission the

salaries of both teaching and non-teaching staff of non-governmental secondary schools has increased w.e.f. 01.01.1986, and such increase is of a substantial nature. Therefore, to balance the burden on the public exchequer, by the impugned resolution, the government has provided that the amount payable as grant for the purposes of other educational expenses and rent for the premises hired is to be restricted. It is an accepted position that the basis for working out the grant payable under the aforesaid heads has been pegged at 20% of the salary bill. Now, when the salary bill itself is being increased by a substantial figure, it cannot be stated that the decision to re-work the basis of working out the grant payable for other educational expenses and rent of the premises does not have any nexus with the object sought to be achieved or that there is no rational behind the decision. In the aforesaid circumstances, it is not possible to uphold the challenge to the validity of the impugned resolution. The resolution is a policy decision and is based on a live or a rational nexus to the material on

record and to the object sought to be achieved, i.e. balancing the increase in the burden on the public exchequer. The petitioners' challenge to the aforesaid extent thus does not merit acceptance.

- (9) However, in so far as the alternative contention is concerned, the petitioners are on a stronger ground and the petition deserves to be accepted. The petitioners are justified in contending that having already incurred the expenses and having planned its affairs on the basis of anticipation of receiving a certain amount of grant cannot be saddled with a decision to recover the amount, even by way of an adjustment, on a retrospective basis. Therefore, it would be just and proper to declare that the resolution dated 17.07.1990 would be operational with prospective effect viz. only on and from the date of resolution and what is stated in subparagraph (5) of Paragraph 'GH' which provides for recovering the amounts paid under Resolutions 14.08.1987 and 24.10.1989 by way of adjustment cannot be permitted. On 20.03.1991 in Special Civil

Application No.1200 of 1991 this Court had granted interim relief to the aforesaid effect and hence, it would be in the fitness of things if the said interim relief is converted into final relief to the said extent.

- (10) In the result, the petition is partly allowed in the aforesaid terms. Rule made absolute accordingly. There shall be no order as to costs.

ORDER IN SPECIAL CIVIL APPLICATION NO.11992 OF 2002

- (11) It is an admitted position between the parties that the controversy involved in the present petition is same as in Special Civil Application No.1200 of 1991. Hence, it is not necessary to set out the facts and contentions in detail. Suffice it to state that for the reasons stated in the judgment rendered as aforesaid in Special Civil Application No.1200 of 1991, the petition is partly allowed. It is stated on behalf of the petitioner that by orders dated 05.11.2001, 06.03.2002 and 26.07.2002 recoveries

by way of adjustment were made before the petition could be taken up for hearing by this Court. In the circumstances, the respondents are directed to release the said amounts in three equal installments every quarter, the first quarter commencing from March, 2007.

- (12) Subject to the aforesaid directions, the petition is partly allowed. Rule made absolute accordingly. There shall be no order as to costs.

ORDER IN SPECIAL CIVIL APPLICATION NO.7859 OF 1995

- (13) It is an admitted position between the parties that the controversy involved in the present petition is same as in Special Civil Application No.1200 of 1991. Hence, it is not necessary to set out the facts and contentions in detail. Suffice it to state that for the reasons stated in the judgment rendered as aforesaid in Special Civil Application No.1200 of 1991, the petition is partly allowed.

- (14) Subject to the aforesaid directions, the petition is partly allowed. Rule made absolute accordingly.

There shall be no order as to costs.

ORDER IN SPECIAL CIVIL APPLICATION NO.352 OF 1997

(15) This petition challenges order dated 17.12.1996 which came to be made pursuant to an order made by this Court in Civil Application No.3417 of 1996 to take a decision in pursuance of the earlier challenge. The authority vide impugned order (at Annexure-E) has reiterated what is stated in the Resolution dated 17.07.1990. It is an admitted position between the parties that the controversy involved in the present petition is same as in Special Civil Application No.1200 of 1991. In fact, this petition is consequential to petitioner's earlier petition, namely, Special Civil Application No.7859 of 1995. Hence, it is not necessary to set out the facts and contentions in detail. Suffice it to state that for the reasons stated in the judgment rendered as aforesaid in Special Civil Application No.1200 of 1991, the petition is partly allowed.

(16) Subject to the aforesaid directions, the petition is

partly allowed. Rule made absolute accordingly.

There shall be no order as to costs.

(17) Registry to place a copy of this order in connected matters.

Sd/-
[D.A. MEHTA, J]

Bhavesh*